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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CITY OF FRESNO et al.,

Plaintiffs and Respondents,

v.

DEPARTMENT OF FINANCE et al.,

Defendants and Appellants.

C083084

(Super. Ct. No. 34-2015-
80002174CUWMGDS)

The City of Fresno (City) filed a petition for writ of mandate seeking relief from decisions made by the Department of Finance (Finance) in a redevelopment agency matter. The trial court issued a judgment resolving some, but not all, of the disputes raised in the petition. It remanded the matter to Finance for resolution of the remaining disputes and retained jurisdiction to review Finance's resolution.

Finance appealed the judgment, and we requested supplemental briefing on whether the judgment is appealable. As we will explain, it is not the form of the decree but the substance and effect of the adjudication that is determinative. We conclude the appeal must be dismissed because the judgment is an interlocutory remand, not a final judgment, and thus is not appealable.

BACKGROUND

Although the title of the City's pleading referenced both a writ petition and a complaint for declaratory and injunctive relief, the two causes of action and the prayer for

relief referred only to a petition for writ of mandate under Code of Civil Procedure section 1085. The petition sought relief from Finance’s decision to reject an Oversight Board resolution approving payment from a Successor Agency to the City on loans the City made to a former redevelopment agency.

In its order after hearing, the trial court noted there were 17 disputed loans between the City and the former redevelopment agency. The trial court entered a judgment partially denying and partially granting the writ petition as follows: (1) denying the writ petition as to four of the loans, and (2) directing issuance of a peremptory writ of mandate to Finance to (A) reverse its rejection of two of the loans and (B) “review its denial of [11 loans] consistent with the analysis . . . in the Court’s Order After Hearing.” The trial court also “retain[ed] jurisdiction to resolve any disputes that may arise regarding [Finance’s] review of the [11 loans].”

DISCUSSION

The problem with the appealability of the trial court’s judgment is that proceedings concerning 11 of the 17 loans are still pending. While the trial court “granted” the petition for writ of mandate on those 11 loans, the trial court did not resolve the issues concerning those loans but instead retained jurisdiction to resolve disputes that might arise regarding Finance’s review of those loans. This left resolution of those 11 loans pending in the trial court, which means there is no final judgment.

Appealability is a jurisdictional prerequisite to an appeal. (*Doran v. Magan* (1999) 76 Cal.App.4th 1287, 1292.) Therefore, if the judgment is not appealable, the appeal must be dismissed. (*Don Jose’s Restaurant, Inc. v. Truck Ins. Exchange* (1997) 53 Cal.App.4th 115, 119.) Appealability is subject to the one final judgment rule, which provides that interlocutory or interim orders are not appealable. This rule prevents piecemeal dispositions and multiple appeals. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741-744 & fn. 9.)

“Under the final judgment rule, ‘ “ ‘There can be but one final judgment in an action, and that is one which in effect ends the suit in the court in which it is entered, and finally determines the rights of the parties in relation to the matter in controversy’ [citations]. A judgment is final ‘when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.’ ” ’ [Citation.]” (*San Joaquin County Dept. of Child Support Services v. Winn* (2008) 163 Cal.App.4th 296, 300.) When we determine whether an order or judgment is final and appealable, “[i]t is not the form of the decree but the substance and effect of the adjudication which is determinative.” (*Lyon v. Goss* (1942) 19 Cal.2d 659, 670.)

Here, more than just compliance with the judgment is required to finally determine the rights of the parties. Under the terms of the peremptory writ, Finance must make new determinations on the 11 unresolved loans, and the trial court has jurisdiction to determine whether those determinations are legally justified. Such retained jurisdiction over matters as yet undetermined is inconsistent with a finding of finality for purposes of appeal. In other words, the appeal in this case violates the one final judgment rule and must be dismissed.

The trial court’s order nominally granting the writ petition as to certain loans was essentially an interlocutory remand because the trial court did not dispose of all issues presented to the trial court in the writ petition. (See *Voices of the Wetlands v. State Water Resources Control Board* (2011) 52 Cal.4th 499 [discussing interlocutory remands].) The trial court remanded to Finance for new determinations without having found error in Finance’s original determinations and retained jurisdiction over the new determinations as to the 11 unresolved loans. The trial court’s order was an interlocutory remand despite the trial court’s styling of its order as a partial granting of the writ petition. The substance, not the form, of the order is determinative. (*Lyon v. Goss, supra*, 19 Cal.2d at

p. 670.) We do not consider whether the trial court had authority to issue an interlocutory remand because the parties do not raise such an issue.

Finance argues the trial court's order is appealable because it left nothing for Finance to resolve, adding: "If [Finance] had reviewed those [loans not resolved in the trial court] consistent with the [trial] court's analysis, [Finance] would almost certainly have had to approve them as enforceable obligations, just as the court specifically directed it to approve the [loans resolved in the trial court]. This is because all [loans] are supported by the same five types of documentation." The argument is self-defeating because a result that is "almost" certain is not certain, and a trial court order making a result "almost" certain is not a final judgment.

This is not a case in which the trial court merely retained jurisdiction to enforce its writ. "It is well settled that the court which issues a writ of mandate retains continuing jurisdiction to make any order necessary to its enforcement." (*City of Carmel-by-the-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 971). Here, however, the trial court's order also retained jurisdiction to resolve disputes, which goes beyond mere enforcement.

Finance complains that, if we dismiss this appeal, it will be required to comply with the trial court's order and have no meaningful opportunity to appeal. (See *City of Carmel-by-the-Sea v. Board of Supervisors*, *supra*, 137 Cal.App.3d at p. 971 [holding that the respondent "waived its right to appeal from those portions of the writ with which it voluntarily purported to comply"].) To the contrary, because there is no final judgment but instead merely an interlocutory remand, all issues from the proceedings may be raised on appeal. Understandably, Finance is concerned that the trial court's order for Finance to consider the unresolved loans anew consistent with the trial court's analysis of the resolved loans will produce results inconsistent with how Finance believes the loans should be analyzed. But Finance's compliance with the trial court's interlocutory remand does not constitute compliance with a writ (as there effectually was no final judgment in

this case) and will leave open for review the questions concerning the proper mode of analysis.

Because the trial court's order is an interlocutory remand and not a final judgment, we must dismiss the appeal.

Alternatively, Finance argues that we should exercise our discretion to treat this proceeding as a petition for writ of mandate. (See, e.g., *Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th at pp. 746-747; *Olson v. Cory* (1983) 35 Cal.3d 390, 401.) We decline. The same reasons for finding the trial court's order nonappealable support a decision not to treat this proceeding as a petition for writ of mandate. The trial court has not yet resolved all issues. Treating this proceeding as a petition for writ of mandate would allow for piecemeal dispositions.

In its supplemental briefing, the City asked us to "uphold the trial court's judgment and dismiss this appeal." While we must dismiss the appeal, we do not "uphold the trial court's judgment" but instead express no opinion concerning the merits of the issues litigated in the trial court.

DISPOSITION

The appeal is dismissed. The City is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

/S/
MAURO, J.

We concur:

/S/
RAYE, P. J.

/S/
DUARTE, J.